

01  
02  
03  
04  
05  
06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 S.J. KRIER, ) CASE NO. C07-0026-RSL  
09 Plaintiff, )  
10 v. ) REPORT AND RECOMMENDATION  
11 KING COUNTY JAIL, )  
12 Defendant. )  
13

14 INTRODUCTION

15 Plaintiff is a Washington state prisoner who is proceeding *pro se* and *in forma pauperis*  
16 in this action filed pursuant to 42 U.S.C. § 1983. Plaintiff's complaint has not been served on  
17 defendants. For the reasons set forth below, the Court recommends that the complaint and this  
18 action be dismissed without prejudice.

19 PROCEDURAL HISTORY

20 Plaintiff is currently incarcerated in the Washington Corrections Center in Shelton,  
21 Washington. At the time he filed his original complaint, plaintiff was apparently not confined.  
22 However, he attempted to represent a class of plaintiffs who were incarcerated in jails operated

01 by the King County Department of Adult and Juvenile Detention (“King County”). (Dkt. #4).  
02 Plaintiff asserted that conditions of confinement at the jails violated the federal Constitution in  
03 myriad ways.<sup>1</sup>

04 The Court reviewed plaintiff’s complaint pursuant to 28 U.S.C. §1915A and also his  
05 request to represent the class of inmates at the King County jails. The Court denied his request  
06 to represent the class because plaintiff is not a lawyer. (Dkt. #3, *citing C.E. Pope Equity Trust*  
07 *v. United States*, 818 F.2d 696, 697 (9th Cir. 1987)). The Court further noted that plaintiff’s  
08 complaint was deficient because it had not alleged when or where plaintiff had been confined in  
09 the jails, and lacked sufficient details. (*Id.* at 2). The Court granted plaintiff leave to file an  
10 amended complaint curing these deficiencies within 30 days. The Court directed the Clerk to  
11 provide plaintiff with a copy of the civil rights complaint form in order to assist plaintiff in filing  
12 the amended complaint.

13 Plaintiff moved for an extension of time to file the amended complaint and the Court  
14 granted plaintiff an additional thirty days, until March 30, 2007, to file the amended complaint.  
15 (Dkt. #8). On March 30, 2007, plaintiff filed the amended complaint. (Dkt. #10). Upon  
16 reviewing the amended complaint, the Court now concludes that this action should be dismissed  
17 without prejudice.

### 18 DISCUSSION

19 In the Order granting plaintiff leave to amend his complaint, the Court directed plaintiff

---

20  
21 <sup>1</sup> The sub-headings in plaintiff’s complaint illustrate his many claims: Classification,  
22 Clothing, Bedding, Hygiene/Linen, HVAC, Food, Lighting, Phone, Visits, Correspondence,  
Publications, Censorship, Profiteering, Legal Access, Grievances, Due Process, Abuse of  
Resources, Political Processes. (Dkt. #4).

01 to “allege where and when he was incarcerated in order to show that his rights were violated.”  
02 (Dkt. #3 at 2). The Court also advised plaintiff that he “must allege facts showing how  
03 individually named defendants caused or personally participated in causing the harm alleged in the  
04 complaint.” (Id., citing *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981)).

05 Plaintiff’s attempt to remedy these deficiencies in his amended complaint is minimal. In  
06 fact, it is clear that in filing the amended complaint, plaintiff merely recycled his original complaint  
07 and attempted to comply with the Court’s Order by adding two new pages at the beginning. (Dkt.  
08 #10). In these two new pages, plaintiff states that he was a pretrial detainee at the time he was  
09 preparing the amended complaint, but he does not allege precisely when or where the alleged  
10 violations took place. Further, the alleged violations themselves are general in nature and do not  
11 specify whether plaintiff *himself* was subjected to the particular policy that he finds objectionable.  
12 For example, plaintiff alleges that King County houses inmates according to their security level,  
13 which is based solely on their history and current charge. (Dkt. #10 at 3). This policy, plaintiff  
14 contends, results in an impermissible mix of “traffic offenders and petty thieves [being] housed  
15 with burglars, robbers and rapists.” (Id.) However, plaintiff does not specify whether, nor for  
16 how long, he was subjected to this purportedly unconstitutional practice, nor does he allege that  
17 he suffered any damages as a result. This lack of precision and specificity applies equally to all the  
18 other claims in the amended complaint, which are identical to the claims plaintiff presented in the  
19 first complaint and which the Court rejected.

20 Ordinarily, plaintiff’s *pro se* status would mitigate these deficiencies and the Court would  
21 be inclined to grant plaintiff a second opportunity to amend his complaint. Here, however, several  
22 reasons counsel against such a solicitous approach. First, it is clear that despite being given over

01 60 days to improve on his original complaint, plaintiff opted to expend minimal effort and  
02 essentially to resubmit his original complaint. Second, it arouses the Court's suspicions that  
03 plaintiff did not use the form complaint that the Clerk sent him along with the Order granting him  
04 leave to amend. The form complaint asks litigants to state whether they have ever filed an action  
05 in federal court and, if so, to list the previous actions. This information is useful to determine,  
06 among other things, whether a plaintiff has any other pending actions that might be duplicative or  
07 whether he has had cases dismissed as frivolous under 28 U.S.C. § 1915(g). Plaintiff chose not  
08 to use this form and instead to file, or refile, his own complaint, and therefore did not answer this  
09 question. A review of the Court's records, however, reveals that plaintiff has brought at least  
10 seven prior actions in this Court, two of which were dismissed as frivolous and two of which were  
11 dismissed for failure to prosecute.<sup>2</sup>

12 Finally, even if plaintiff were permitted to further amend his complaint, it is doubtful that  
13 he would be able to meet the showing required under the Prison Litigation Reform Act ("PLRA").  
14 Under the PLRA, "[n]o Federal civil action may be brought by a prisoner. . . for mental or  
15 emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C.  
16 § 1997e(e); *see Oliver v. Keller*, 289 F.3d 623, 627 (9th Cir. 2002). Plaintiff does not allege that  
17 he himself suffered any emotional or mental injury, much less show that he suffered a physical  
18 injury resulting from any of the alleged violations. Indeed, it is difficult to imagine how the bulk  
19 of plaintiff's claims could result in a physical injury, since they deal, for the most part, with issues  
20

---

21 <sup>2</sup> *See Krier v. Blodgett*, Case No. C01-5609-FDB (dismissed as frivolous); *Krier v. Davis*,  
22 Case No. C95-1057-JCC (same); *Krier v. Wright*, Case No. C94-5130-RJB (dismissed for failure  
to prosecute); *Krier v. LaMendola*, Case No. C04-843-RSL (same).

01 pertaining to daily life such as clothing, food, heating, and lighting.<sup>3</sup>

02       Therefore, in light of plaintiff's half-hearted attempt to amend the current complaint, his  
03 lack of candor regarding his prior litigation in federal court, the futility of further amendment, and  
04 the Court's obligation to conserve scarce judicial resources, *see O'Loughlin v. Doe*, 920 F.2d 614,  
05 618 (9th Cir. 1990), the Court concludes that plaintiff does not merit another opportunity to  
06 amend his complaint. Because the amended complaint fails to state a claim upon which relief can  
07 be granted, the Court recommends that it be dismissed without prejudice.

08                                   CONCLUSION

09       For the foregoing reasons, the Court recommends that plaintiff's amended complaint and  
10 this action be dismissed without prejudice. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). The Court also  
11 recommends that this dismissal count as a "strike" under 28 U.S.C. § 1915(g). A proposed Order  
12 accompanies this Report and Recommendation.

13       DATED this 3rd day of April, 2007.

14                                     
15                                   Mary Alice Theiler  
16                                   United States Magistrate Judge

17  
18  
19 \_\_\_\_\_  
20       <sup>3</sup> Other claims such as censorship or legal access do not require a showing of physical  
21 injury. *See Oliver*, 289 F.3d at 630. However, as mentioned, plaintiff has not alleged that he was  
22 harmed in a concrete fashion by any of these restrictions. *See, e.g., Lewis v. Casey*, 518 U.S. 343,  
349 (1996) (claim of denial of access to law library must include "actual injury"). Further, because  
plaintiff is no longer confined in a King County jail, his prayer for injunctive relief appears to be  
moot. *See Rhodes v. Robinson*, 408 F.3d 559, 566 n.8 (9th Cir. 2005).